HON'BLE SRI JUSTICE B. PRAKASH RAO
AND
HON'BLE SRI JUSTICE M. VENKATESWARA REDDY

W.P.NO. 12370 OF 2003

DATED: 29.1.2007

Between:

Daggumati Ramanamma and others

...

Petitioners

and

The Special Court under A.P. Land Grabbing (Prohibition) Act, represented by Its Registrar, Hyderabad and another

...

Respondents

HON'BLE SRI JUSTICE B. PRAKASH RAO
AND
HON'BLE SRI JUSTICE M. VENKATESWARA REDDY

W.P.NO.12370 OF 2003

ORDER: (PER BPR.J)

The petitioners, against whom the proceedings under the provisions of the A.P. Land Grabbing (Prohibition) Act, 1982 (for short 'the Act') were initiated, seek a writ of Certiorari assailing the correctness of the orders allowing the appeal at the instance of the 2nd respondent-appellant herein in LGA No.17 of 2002 dated 28.3.2003, on the file of the Special Court under the Act and reversing the orders dismissing the application filed by the 2nd respondent-petitioner herein in LGOP NO.3 of 1996 dated 17.7.2002, on the file of the Special Tribunal-cum-District Judge, Nellore.

Heard Sri S.V. Muni Reddy, learned counsel for the petitioners, Sri O. Manoher Reddy, learned counsel for the contesting respondent and also the learned

Government Pleader for Assignments.

Few facts necessary for disposal of this case are that in the application filed before the Special Tribunal-cum-District Judge, the case of the 2nd respondent herein is that originally one G.K. Govinda Reddy was assigned patta on 7.5.1970 and he was put in possession and that the said Govinda Reddy later sold the said property to the 2nd respondent under a registered sale deed for valid consideration and since then he has been in possession and enjoyment. Subsequently, as the 2nd respondent could not protect the property due to his transferable job, the petitioners herein encroached upon the said property, who were closely related to the 2nd respondent. Thereafter, the 2nd respondent filed a suit in O.S.No.303 of 1994, wherein injunction was granted on 13.2.1995 and it is his contention that having regard to the facts and circumstances, he is alone entitled for the possession of the property since the petitioners do not have any title.

The petitioners herein, who contested the said application, denied the case of the 2nd respondent especially the purchase made by him under a registered sale deed dated 2.12.1971 and also the fact of

possession by him. It is their further case that the said purchase itself is illegal and does not create any right, title or interest whatsoever in the property. It is further averred that there has been a mortgage for the amount which has been borrowed by the petitioners for the purchase of the said property and it is only due to misunderstandings between the parties, the said suit came to be filed. That apart, their specific plea is to the effect that they have perfected the title by adverse possession.

On these allegations, the Special Court framed the necessary issues and on behalf of the petitioners herein, RWs 1 and 2 were examined and Exs. B-1 to B-15 marked. On behalf of the 2nd respondent-petitioner, he himself was examined as PW-1 and marked Exs.A-1 to A-9.

After taking into consideration the submissions made by the parties and on perusing the material available on record, the Special Tribunal dismissed the application filed by the 2nd respondent only on the ground that the 2nd respondent has failed to prove possession and dispossession as required under law and also failed to discharge the burden of proving

possession.

On further appeal, the lower appellate authority namely; the Special Court under the Act, after once again going through the entire record narrowed down the entire controversy into the twin questions namely as to ownership and also the sustainability of the plea of adverse possession, and found that the 2nd respondent is the owner of the property. It further held that since the petitioners have failed to prove their plea of adverse possession, hence they are land grabbers and allowed the appeal observing that the petitioners were in possession without any entitlement. Hence, the writ petition.

Having heard the counsel on either side and after perusing the entire material on record, the entire case of the petitioners squarely vests mainly on the sole ground that they could not prove the fact of adverse possession in order to claim their right of possession over the suit schedule property. From the judgments of both the Tribunals, it is quite apparent that there is inconsistency in the very approach made by the petitioners. Initially, the petitioners succeeded in getting the application filed by the 2nd respondent

dismissed only on the ground of possession and dispossession as required under the law. Whereas in the appeal, they fell back on the plea of adverse possession, which on the face of it, wholly remained unsubstantiated for proper evidence and material and therefore having regard to such inconsistency and failure on the part of the petitioners to prove adverse possession which is very fatal, we do not find any perversity in the conclusion arrived at by the appellate authority, nor is there any ground warranting interference, under Art.226 of the Constitution.

In the circumstances, there are no merits and the writ petition is accordingly dismissed. The petitioners shall vacate the land within a period of three months from today. No costs.

B. PRAKASH RAO, J

M. VENKATESWARA REDDY

DATE: 29.1.2007

CVM